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S. 376

[Report No. 106^o]

To amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 4, 1999

Mr. Burns (for himself, Mr. McCain, Mr. Dorgan, Mr. Bryan, Mr. Brownback, Mr. Cleland, Mr. Kerry , and Mr. Inouye,) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

May __, 1999

Reported by Mr. McCain, with an amendment in the nature of a substitute

[Strike all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[Text of S. 376, as introduced, omitted]

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Open-market Reorganization for the Betterment of International Telecommunications Act''.

SEC. 2. PURPOSE.

It is the purpose of this Act to promote a fully competitive domestic and international market for satellite communications services for the benefit of consumers and providers of satellite services by fully encouraging the privatization of the intergovernmental satellite organizations, INTELSAT and Inmarsat, and reforming the regulatory framework of the COMSAT Corporation.

SEC. 3. FINDINGS.

The Congress finds that:

(1) International satellite communications services constitute a critical component of global voice, video and data services, play a vital role in the integration of all nations into the global economy and contribute toward the ability of developing countries to achieve sustainable development.

(2) The United States played a pivotal role in stimulating the development of international satellite communications services by enactment of the Communications Satellite Act of 1962 (47 U.S.C. 701-744), and by its critical contributions, through its signatory, the COMSAT Corporation, in the establishment of INTELSAT, which has successfully established global satellite networks to provide member countries with worldwide access to telecommunications services, including critical lifeline services to the developing world.

(3) The United States played a pivotal role in stimulating the development of international satellite communications services by enactment of the International Maritime Satellite Telecommunications Act (47 U.S.C. 751-757), and by its critical contributions, through its signatory, COMSAT, in the establishment of Inmarsat, which enabled member countries to provide mobile satellite services such as international maritime and global maritime distress and safety services to include other satellite services, such as land mobile and aeronautical communications services.

(4) By statute, COMSAT, a publicly traded corporation, is the sole United States signatory to INTELSAT and, as such, is responsible for carrying out United States commitments under the INTELSAT Agreement and the INTELSAT Operating Agreement. Pursuant to a binding Headquarters Agreement, the United States, as a party to INTELSAT, has satisfied many of its obligations under the INTELSAT

Agreement.

(5) In the 37 years since enactment of the Communications Satellite Act of 1962, satellite technology has advanced dramatically, large-scale financing options have improved immensely and international telecommunications policies have shifted from those of natural monopolies to those based on market forces, resulting in multiple private commercial companies around the world providing, or preparing to provide, the domestic, regional, and global satellite telecommunications services that only INTELSAT and Inmarsat had previously had the capabilities to offer.

(6) Private commercial satellite communications systems now offer the latest telecommunications services to more and more countries of the world with declining costs, making satellite communications an attractive complement as well as alternative to terrestrial communications systems, particularly in lesser developed countries.

(7) To enable consumers to realize optimum benefits from international satellite communications services, and to enable these systems to be competitive with other international telecommunication systems, such as fiber optic cable, the global trade and regulatory environment must support vigorous and robust competition.

(8) In particular, all satellite systems should have unimpeded access to the markets that they are capable of serving, and the ability to compete in a fair and meaningful way within those markets.

(9) Transforming INTELSAT and Inmarsat from intergovernmental organizations into conventional satellite services companies is a key element in bringing about the emergence of a fully competitive global environment for satellite services.

(10) The issue of privatization of any state-owned firm is extremely complex and multifaceted. For that reason, the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies or government conferred advantages.

(11) It is in the interest of the United States to negotiate the removal of its reservation in the Fourth Protocol to the General Agreement on Trade in Services regarding INTELSAT's and Inmarsat's access to the United States market through COMSAT as soon as possible, but such reservation cannot be removed without adequate assurance that the United States market for satellite services will not be disrupted by such INTELSAT or Inmarsat access.

(12) The Communications Satellite Act of 1962, and other applicable United States laws, need to be updated to encourage and complete the pro-competitive privatization of INTELSAT and Inmarsat, to update the domestic United States regulatory regime governing COMSAT, and to ensure a competitively neutral United States framework for the provision of domestic and international telecommunications services via satellite systems.

SEC. 4. ESTABLISHMENT OF SATELLITE SERVICES COMPETITION; PRIVATIZATION.

The Communications Satellite Act of 1962 (47 U.S.C. 701) is amended by adding at the end the following:

``TITLE VI_SATELLITE SERVICES COMPETITION AND PRIVATIZATION

``Subtitle A_Transition to a Privatized INTELSAT

``SEC. 601. POLICY OF THE UNITED STATES. ``It is the policy of the United States to_

``(1) encourage INTELSAT to privatize in a pro-competitive manner as soon as possible, but not later than January 1, 2002, recognizing the need for a reasonable transition and process to achieve a full, pro-competitive restructuring; and

``(2) work constructively with its international partners in INTELSAT, and with INTELSAT itself, to bring about a prompt restructuring that will ensure fair competition, both in the United States as well as in the global markets served by the INTELSAT system; and

``(3) encourage Inmarsat's full implementation of the terms and conditions of its privatization agreement.

``SEC. 602. ROLE OF COMSAT. `` (a) Advocacy._ As the United States signatory to INTELSAT, COMSAT shall act as an aggressive advocate of pro-competitive privatization of INTELSAT. With respect to the consideration within INTELSAT of any matter related to its privatization, COMSAT shall fully consult with the United States government prior to exercising its voting rights and shall exercise its voting rights in a manner fully consistent with any instructions issued. In the event that the US signatory to INTELSAT is acquired after enactment of this section, the President and the Commission shall assure that the instructional process safeguards against conflicts of interest.

``(b) Annual Reports._ The President and the Commission shall report annually to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, respectively, on the progress being made by INTELSAT and Inmarsat to privatize and complete privatization in a pro-competitive manner.

``SEC. 603. RESTRICTIONS PENDING PRIVATIZATION. ``INTELSAT shall be prohibited from entering the United States market directly to provide any satellite communications services or space segment capacity to carriers (other than the United

States signatory, COMSAT) or end users in the United States prior to achieving a pro-competitive privatization pursuant to section 613(a).

``Subtitle B_Actions to Ensure Pro-competitive Satellite Services

``SEC. 611. PRIVATIZATION. (a) In General._ The President shall seek apro-competitive privatization of INTELSAT as soon as practicable, but no later than January 1, 2002. Such privatization shall be confirmed by a final decision of the INTELSAT Assembly of Parties and shall be followed by a timely initial public offering taking into account relative market conditions.

(b) Ensure Continuation of Privatization._ The President and the Commission shall seek to ensure that the privatization of Inmarsat continues in a pro-competitive manner.

``SEC. 612. PROVISION OF SERVICES IN THE UNITED STATES BY PRIVATIZED AFFILIATES OF INTERGOVERNMENTAL SATELLITE ORGANIZATIONS.

``(a) In General._ With respect to any application for a satellite earth station or space station under title III, or any application under section 214, of the Communications Act of 1934 (47 USC 301 et seq.), or any letter of intent to provide service in the United States via non-United States licensed space segment, submitted by a privatized IGO affiliate or successor, the Commission_

``(1) shall apply a presumption in favor of entry to an IGO affiliate or successor licensed by a WTO Member for services covered by United States commitments under the WTO Basic Telecom Agreement;

``(2) may attach conditions to any grant of authority to an IGO affiliate or successor that raises the potential for competitive harm; or

``(3) shall in the exceptional case in which an application by an IGO affiliate or successor would pose a very high risk to competition in the United States satellite market, deny the application.

``(b) Determination Factors._ In determining whether an application to serve the United States market by an IGO affiliate raises the potential for competitive harm or risk under (a)(2), the Commission shall consider any potential anti-competitive or market distorting consequences of continued relationships or connections between an IGO and its affiliates including_

``(1) whether the IGO affiliate is structured to prevent anti-competitive practices such as collusive behavior or cross-subsidization;

``(2) the degree of affiliation between the IGO and its affiliate;

“(3) whether the IGO affiliate can directly or indirectly benefit from IGO privileges and immunities;

“(4) the ownership structure of the affiliate and the effect of IGO and other Signatory ownership;

“(5) the existence of clearly defined arm's-length conditions governing the affiliate-IGO relationship including separate officers, directors, employees, and accounting systems;

“(6) the existence of fair market valuing for permissible business transactions between an IGO and its affiliate that is verifiable by an independent audit and consistent with normal commercial practice and generally accepted accounting principles;

“(7) the existence of common marketing;

“(8) the availability of recourse to IGO assets for credit or capital;

“(9) whether an IGO registers or coordinates spectrum or orbital locations on behalf of its affiliate; and

“(10) whether the IGO affiliate has corporate charter provisions prohibiting reaffiliation with the IGO after privatization.

“(c) Sunset._ The provisions of subsection (b) shall cease to have effect upon approval of the application pursuant to section 613.

120 “(d) Public Interest Determination._ Nothing in this Act shall affect the Commission's ability to make a public interest determination concerning any application pertaining to entry into the United States market.

“SEC. 613. PRESIDENTIAL NEGOTIATING OBJECTIVES AND FCC CRITERIA FOR PRIVATIZED IGOs.

“(a) In General._ Upon a final decision of the INTELSAT Assembly of Parties creating the legal structure and characteristics of the privatized INTELSAT and recognizing that Inmarsat transitioned into a private company on April 15, 1999, the President shall within 30 days report to the Congress on the extent to which such privatization framework meets each of the criteria in subsection (c), and whether taking into consideration all other relevant competitive factors, entry of a privatized INTELSAT or Inmarsat into the United States market will not be likely to distort competition.

“(b) Purpose of Privatization Criteria._ The criteria provided in subsection (c) shall be used as_

“(1) the negotiation objectives for achieving the privatization of INTELSAT no later than January 1, 2002, and also for Inmarsat;

“(2) the standard for measuring, pursuant to subsection (a), whether negotiations have resulted in an acceptable framework for achieving the pro-competitive privatization of INTELSAT and Inmarsat; and

“(3) licensing criteria by the Commission in making its independent determination of whether the certified framework for achieving the pro-competitive privatization of INTELSAT and Inmarsat has been properly implemented by the privatized INTELSAT and Inmarsat.

“(c) Privatization Criteria._ A pro-competitively privatized INTELSAT or Inmarsat_

“(1) has no privileges or immunities limiting legal accountability, commercial transparency, or taxation;

“(2) has submitted to the jurisdiction of competition and independent regulatory authorities of a nation that is a signatory to the World Trade Organization Agreement on Basic Telecommunications and that has implemented or accepted the agreement's reference paper on regulatory principles;

“(3) can offer assurance of an arm's-length relationship in all respects between itself and any IGO affiliate;

“(4) has given due consideration to the international connectivity requirements of thin route countries;

“(5) can demonstrate that the valuation of assets to be transferred post-privatization is in accordance with generally accepted accounting principles;

“(6) has access to orbital locations and associated spectrum post-privatization in accordance with the same regulatory processes and fees applicable to other commercial satellite systems;

“(7) conducts technical coordinations post-privatization under normal, established ITU procedures;

“(8) has an ownership structure in the form of a stock corporation or other similar and accepted commercial mechanism, and a commitment to a timely initial public offering has been established for the sale or purchase of company shares;

“(9) shall not acquire, or enjoy any agreements or arrangements which secure, exclusive access to any national telecommunications market; and

“(10) will have accomplished a privatization consistent with the criteria listed in this subsection at the earliest possible date, but not later than January 1, 2002, for INTELSAT and Inmarsat.

“(d) FCC Independent Determination on Implementation._ After the President has made a report to Congress pursuant to subsection (a), with respect to any application for a satellite earth station or space station under title III or any application under section 214 of the Communications Act of 1934 (47 U.S.C. 214), or any letter of intent to provide service in the United States via a non-United States licensed space segment, submitted by a privatized affiliate prior to the privatized IGO, or by a privatized IGO, the Commission shall consider whether the enumerated objectives for a pro-competitive privatization of INTELSAT under this section have been implemented with respect to the privatized IGO, but in making that consideration, may neither contract or expand the privatization criteria in subsection (c).

“(e) Authority to Deny an Application._ Nothing in this section affects the Commission's authority to condition or deny an application on the basis of the public interest.

“SEC. 614. FAILURE TO PRIVATIZE IN A TIMELY MANNER. “(a) Report._ In the event that INTELSAT fails to fully privatize as provided in sections 611 by January 1, 2002, the President shall_

“(1) instruct all instrumentalities of the United States Government to grant a preference for procurement of satellite services from commercial private sector providers of satellite space segment rather than IGO providers;

“(2) immediately commence deliberations to determine what additional measures should be implemented to ensure the rapid privatization of INTELSAT;

“(3) no later than March 31, 2002, issue a report delineating such other measures to the Committee on Commerce of the House of Representatives, and Committee on Commerce, Science, and Transportation of the Senate; and

“(4) withdraw as a party from INTELSAT.

“(b) Reservation Clause._ The President may determine, after consulting with Congress, that in consideration of privatization being imminent, it is in the national interest of the United States to provide a reasonable extension of time for completion of privatization.

“Subtitle C_COMSAT Governance and Operation

“SEC. 621. ELIMINATION OF PRIVILEGES AND IMMUNITIES. “(a) Comsat._COMSAT shall not have any privilege or immunity on the basis of its status as

a signatory or a representative of the United States to INTELSAT and Inmarsat, except that COMSAT retains its privileges and immunities_

“(1) for those actions taken in its role as the United States signatory to INTELSAT or Inmarsat upon instruction of the United States Government; and

“(2) for actions taken when acting as the United States signatory in fulfilling signatory obligations under the INTELSAT Operating Agreement.

“(b) No Joint or Several Liability._ If COMSAT is found liable for any action taken in its status as a signatory or a representative of the party to INTELSAT, any such liability shall be limited to the portion of the judgment that corresponds to COMSAT's percentage of the responsibility, as determined by the trier of fact.

“(c) Prospective Effect of Elimination._ The elimination of privileges and immunities contained in this section shall apply only to actions or decisions taken by COMSAT after the date of enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act.

“SEC 622. ABROGATION OF CONTRACTS PROHIBITED. “Nothing in this Act or the Communications Act of 1934 (47 U.S.C. 151 et seq.) shall be construed to modify or invalidate any contract or agreement involving COMSAT, INTELSAT, or any terms or conditions of such agreement in force on the date of enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act, or to give the Commission authority, by rule-making or any other means, to invalidate any such contract or agreement, or any terms and conditions of such contract or agreement.

“SEC. 623. PERMITTED COMSAT INVESTMENT. “Nothing in this Act shall be construed as precluding COMSAT from investing in or owning satellites or other facilities independent from INTELSAT, or from providing services through reselling capacity over the facilities of satellite systems independent from INTELSAT. This section shall not be construed as restricting the types of contracts which can be executed or services which may be provided by COMSAT over the independent satellites or facilities described in this subsection.

“Subtitle D_General Provisions

“SEC. 631. PROMOTION OF EFFICIENT USE OF ORBITAL SLOTS AND SPECTRUM. “Allsatellite system operators authorized to access the United States market should make efficient and timely use of orbital and spectrum resources in order to ensure that these resources are not warehoused to the detriment of other new or existing satellite system operators. Where these assurances cannot be provided, satellite system operators shall arbitrate their rights to these resources according to ITU procedures.

``SEC. 632. PROHIBITION ON PROCUREMENT PREFERENCES. ``Except pursuant to section 615 of this Act, nothing in this title or the Communications Act of 1934 (47 U.S.C. 151 et seq.) shall be construed to authorize or require any preference in Federal Government procurement of telecommunications services, for the satellite space segment provided by INTELSAT or Inmarsat, nor shall anything in this title or that Act be construed to result in a bias against the use of INTELSAT or Inmarsat through existing or future contract awards.

``SEC. 633. SATELLITE AUCTIONS. ``Notwithstanding any other provision of law, the Commission shall not assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunications Union and in other bilateral and multilateral negotiations any assignment by competitive bidding of orbital locations, licenses, or spectrum used for the provision of such services.

``SEC. 634. RELATIONSHIP TO OTHER LAWS. ``Whenever the application of the provisions of this Act is inconsistent with the provisions of the Communications Act of 1934, the provisions of this Act shall govern.

``SEC. 635. EXCLUSIVITY ARRANGEMENTS. `` (a) In General._ No satellite operator shall acquire or enjoy the exclusive right of handling traffic to or from the United States, its territories or possessions, and any other country or territory by reason of any concession, contract, understanding, or working arrangement to which the satellite operator or any persons or companies controlling or controlled by the operator are parties.

`` (b) Exception._ In enforcing the provisions of this subsection, the Commission-

`` (1) shall not require the termination of existing satellite telecommunications services under contract with, or tariff commitment to, such satellite operator; but

`` (2) may require the termination of new services only to the country that has provided the exclusive right to handle traffic, if the Commission determines the public interest, convenience, and necessity so requires.

`` Subtitle E_Definitions

``SEC. 641. DEFINITIONS. `` (a) In General._ In this title:

`` (1) INTELSAT._ The term 'INTELSAT' means the International Telecommunications Satellite Organization established pursuant to the Agreement Relating to the International Telecommunications Satellite Organization.

`` (2) Inmarsat._ The term 'Inmarsat' means the International Mobile Satellite Organization established pursuant to the Convention on the International Maritime Satellite Organization and may also refer to INMARSAT Limited when appropriate.

``(3) COMSAT._ The term `COMSAT' means the corporation established pursuant to title III of this Act and its successors and assigns.

``(4) Signatory._ The term `signatory' means the telecommunications entity designated by a party that has signed the Operating Agreement and for which such Agreement has entered into force.

``(5) Party._ The term `party' means, in the case of INTELSAT, a nation for which the INTELSAT agreement has entered into force or been provisionally applied, and in the case of INMARSAT, a nation for which the Inmarsat convention entered into force.

``(6) Commission._ The term `Commission' means the Federal Communications Commission.

``(7) International telecommunication union; ITU._ The terms `International Telecommunication Union' and `ITU' mean the intergovernmental organization that is a specialized agency of the United Nations in which member countries cooperate for the development of telecommunications, including adoption of international regulations governing terrestrial and space uses of the frequency spectrum as well as use of the geostationary orbital arc.

``(8) Privatized INTELSAT._ The term `privatized INTELSAT' means any entity created from the privatization of INTELSAT from the assets of INTELSAT.

``(9) Privatized Inmarsat._ The term `privatized Inmarsat' means any entity created from the privatization of Inmarsat from the assets of Inmarsat, namely INMARSAT, Ltd.

``(10) Orbital location._ The term `orbital location' means the location for placement of a satellite in geostationary orbits as defined in the International Telecommunication Union Radio Regulations.

``(11) Spectrum._ The term `spectrum' means the range of frequencies used to provide radio communication services.

``(12) Space segment._ The term `space segment' means the satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment used to support the operation of satellites owned or leased by INTELSAT and Inmarsat or an IGO successor or affiliate.

``(13) INTELSAT agreement._ The term `INTELSAT agreement' means the agreement relating to the International Telecommunications Satellite Organization, including all of its annexes (TIAS 7532, 23 UST 3813).

``(14) Operating agreement._ The term `operating agreement' means_ `` (A) in the

case of INTELSAT, the agreement, including its annex but excluding all titles of articles, opened for signature at Washington on August 20, 1971, by governments or telecommunications entities designated by governments in accordance with the provisions of The Agreement; and

“(B) in the case of Inmarsat, the Operating Agreement on the International Maritime Satellite Organization, including its annexes.

“(15) Headquarters agreement._ The term ‘headquarters agreement’ means the binding international agreement, dated November 24, 1976, between the United States and INTELSAT covering privileges, exemptions, and immunities with respect to the location of INTELSAT’s headquarters in Washington, D.C.

“(16) Direct-to-home satellite services._ The term ‘direct-to-home satellite services’ means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

“(17) IGO._ The term ‘IGO’ means the Intergovernmental Satellite organizations, INTELSAT and Inmarsat.

“(18) IGO affiliate._ The term ‘IGO affiliate’ means any entity in which an IGO owns or has owned an equity interest of 10 percent or more.

“(19) IGO successor._ The term ‘IGO Successor’ means an entity which holds substantially all the assets of a pre-existing IGO.

“(20) Global maritime distress and safety services._ The term ‘global maritime distress and safety services’ means the automated ship-to-shore distress alerting system which uses satellite and advanced terrestrial systems for international distress communications and promoting maritime safety in general, permitting the worldwide alerting of vessels, coordinated search and rescue operations, and dissemination of maritime safety information.

“(b) Common Terms._ Except as otherwise provided in subsection (a), terms used in this title that are defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153) have the meaning provided in that section.”.

SEC. 5. CONFORMING CHANGES.

(a) Repeal of Federal Coordination and Planning Provisions._ Section 201 of the Communications Satellite Act of 1962 (47 U.S.C. 721) is amended to read as follows:

“SEC. 201. IMPLEMENTATION OF POLICY. “The Federal Communications Commission, in its administration of the Communications Act of 1934,

shall make rules and regulations to carry out the provisions of this Act."

(b) Repeal of Government-established Corporation Provisions._

(1) In general._ Section 301 of the Communications Satellite Act of 1962 (47 U.S.C. 731) is amended to read as follows:

``SEC. 301. CORPORATION. ``The corporation organized under the provisions of this title, as this title existed before the enactment of the Open-market Reorganization for the Betterment of International Telecommunications Act, known as COMSAT, and its successors and assigns, are subject to the provisions of this Act. The right to repeal, alter, or amend this Act at any time is expressly reserved.".

(2) Conforming changes._ Title III of the Communications Satellite Act of 1962 (47 U.S.C. 731 et seq.) is amended_

(A) by striking sections 302, 303, and 304;

(B) by redesignating section 305 as section 302; and

(C) by striking subsection (c) of section 302, as redesignated.

(c) Repeal of Certain Miscellaneous Provisions._ Title IV of the Communications Satellite Act of 1962 (47 U.S.C. 741 et seq.) is amended_

(1) by striking section 402;

(2) by striking subsection (a) of section 403 and redesignating subsections (b) and (c) as subsections (a) and (b), respectively; and

(3) by striking section 404.

172SEC. 6. INTERNATIONAL MARITIME SATELLITE TELECOMMUNICATIONS ACT
AMENDMENTS.

(a) Repeal of Superseded Authority._ Title V of the Communications Satellite Act of 1962 (47 U.S.C. 751 et seq.) is amended_

(1) by striking sections 502, 503, 504, and 505; and

(2) by inserting after section 501 the following:

``SEC. 502. GLOBAL SATELLITE SAFETY SERVICES AFTER PRIVATIZATION
OF BUSINESS OPERATIONS OF INMARSAT.

``In order to ensure the continued provision of global maritime distress and safety

satellite telecommunications services after privatization of the business operations of Inmarsat, the President may maintain on behalf of the United States membership in the International Mobile Satellite Organization."

(b) Effective Date._ The amendments made by subsection (a) take effect on the date on which the International Mobile Satellite Organization ceases to operate directly a global mobile satellite system.

